

MELVIN BRADSHAW

IBLA 83-47

Decided November 23, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 182343 through U MC 182575.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication -- Evidence: Generally --Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Although, at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he, in fact, did so, in enacting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), Congress specifically placed the burden on the claimant to show by his compliance with FLPMA's requirements that the claim has not been abandoned, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

APPEARANCES: Melvin Bradshaw, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Melvin Bradshaw appeals the Utah State Office, Bureau of Land Management (BLM), decision of September 10, 1982, which declared unpatented mining claims, 1/ U MC 182343 through U MC 182575, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant states that he attempted to deliver the 1981 proofs of labor to BLM on December 30, 1981, but because of a severe snowstorm and blizzard, traffic between Milford, Utah, where he lives, and Salt Lake City was stopped en route so that he arrived at the BLM office after it had closed for the day. He asserts that he filed the 1981 proofs of labor with BLM on January 4, 1982, at 8:03 a.m. He contends he should be absolved from the requirement of timely filing because of the circumstances of the adverse weather conditions. Copies of the 1981 proofs of labor submitted with the appeal show that they were recorded in Beaver County, Utah, on August 31, 1981. Appellant gave no explanation why he waited until December 30 to attempt to deliver the proofs to BLM.

1/ See Appendix.

The claims were located prior to 1976 and, in accordance with section 314(b) of FLPMA, were recorded with BLM on October 19, 1979. Affidavits of assessment work were filed timely with BLM in 1979 and 1980.

Section 314(a) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2), reads:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau [of Land Management] designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

[1] Section 314 of FLPMA specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of every calendar year thereafter. Such filing must be made both in the office where the notice or certificate of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment of a proper recording of evidence of assessment work or a notice of intention to hold the mining claim in the proper county office does not relieve the claimant from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Thomas G. Mason, 64 IBLA 104 (1982); Enterprise Mines, Inc., 58 IBLA 372 (1981); Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Thomas G. Mason, supra; Enterprise Mines, Inc., supra; Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying timely with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences when a filing is made late. Lynn Keith, supra.

[2] Arguments similar to those here presented were considered by the Board in Lynn Keith, supra. There we held

[t]he conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co. Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

[3] Appellant argues that he had no intention of abandoning any of these claims. That issue has been considered by the Board in earlier cases, such as John Murphy, 58 IBLA 75 (1981). There we said:

[5] Appellants also argue that the use of the term "abandonment" in section 314(c) indicates a significantly different legal connotation from the term "forfeiture," which latter term, appellants note, is typically applied to the invalidation of mining claims for failing to properly record or otherwise perfect claims under Federal statutes. Appellants assert that Congress deliberately chose the term "abandonment" over the term "forfeiture," thus showing Congressional intent to void only stale mining claims as opposed to recently-worked claims like appellants'. They argue that they could not have abandoned their claims because they had no intent to do so and because they colorably complied with section 314. The essence of this argument was presented to the Board in Lynn Keith, *supra*, in which we said:

At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

Lynn Keith, *supra*, at 197, 88 I.D. at 372.

This result is ineluctable because the sole and fundamental purpose of section 314 is to provide for recordation of certain named instruments. Compliance with this statute requires, by its nature, that the instruments be properly and timely delivered to

the prescribed offices, and if this not accomplished, a claimant's good-faith subjective intent to comply is no cure. [Emphasis in original.]

58 IBLA at 82, 83.

Although there have been attacks on the recordation requirements of FLPMA as being unconstitutional, the courts have validated section 314, including section 314(c) specifically. For example, when presented with the argument that the conclusive presumption of abandonment acts as a forfeiture statute violative of due process, the Ninth Circuit, in Western Mining Council v. Watt, 643 F.2d 618, 629 (9th Cir. 1981), cert. denied, 102 S.Ct. 567 (1981), stated, "[W]e reject plaintiffs' conclusion that the provisions of § 1744(c) are unreasonably harsh in requiring that mining claims be conclusively presumed to be abandoned upon failure to file." 2/ Thus, the statute's clear provision for conclusive abandonment requires us, on these facts, to find that the decision below is correct.

We remind appellant that he may relocate the claims, subject to any valid intervening rights of third parties or of the United States and assuming the availability of the land to mining location, by filing applicable instruments, based on new location dates, as prescribed by the regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Newton Frishberg
Administrative Judge
Alternate Member

2/ In this opinion the Ninth Circuit relied extensively on the reasoning and language of Topaz Beryllium Co. v. United States, 479 F.Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981).

APPENDIX

CLAIM NAME: UMC NOS: LOCATION DATE: FILING DATE:

Minnie & Minnie # 1 182343-182344 July 1, 1955 Oct. 19, 1979

Sandman & Sandman # 2 182345-182347 Apr. 26, 1956 Oct. 19, 1979

Star Nos. 1-34 182348-182381 July 2, 1970 Oct. 19, 1979

DRU'S Cedar Nos. 1-6 182382-182387 Sept. 1, 1965 Oct. 19, 1979 DRU'S Cedar Mill
Site 182388-182393 Dec. 29, 1974 Oct. 19, 1979 Nos. 1-8 182394 Dec. 29, 1974
Oct. 19, 1979

DRU'S Tunnel Site

Bradshaw Millsite 182395 Jan. 4, 1973 Oct. 19, 1979

White Elephant 182396-182465 Sept. 1, 1965 Oct. 19, 1979 Nos. 1-18

White Elephant 182414-182439 Aug. 18, 1966 Oct. 19, 1979 Nos. 19-44

White Elephant 182440-182459 Aug. 28, 1966 Oct. 19, 1979 Nos. 45-64

White Elephant 182460-182465 Apr. 15, 1969 Oct. 19, 1979 Nos. 70-75

Lucky Lad Nos. 1-3 182466-182468 Apr. 6, 1969 Oct. 19, 1979

Lucky Lad Nos. 11, 182469-182472 Apr. 13, 1969 Oct. 19, 1979 12, 14, 15

Mr. Ed Nos. 1 & 2 182473-182474 Apr. 7, 1969 Oct. 19, 1979

Tom's Place 182475 Sept. 1, 1968 Oct. 19, 1979 Tom's Place Nos. 2-4

182476-182478 Sept. 1, 1968 Oct. 19, 1979

Ranch Canyon Nos. 1-21 182479-182499 Apr. 18, 1957 Oct. 19, 1979 Bear Hill No. 1 182500
Apr. 12, 1957 Oct. 19, 1979

Bear Hill No. 2 182501 Aug. 12, 1956 Oct. 19, 1979

Bear Hill No. 2 182502 Apr. 12, 1957 Oct. 19, 1979

Bear Hill No. 3 182503 Aug. 12, 1956 Oct. 19, 1979

Bear Hill No. 3 182504 Apr. 13, 1957 Oct. 19, 1979

Bear Hill Nos. 4-6 182505-182507 Apr. 13, 1957 Oct. 19, 1979

Bear Hill Nos. 7-9 182508-182510 Apr. 15, 1957 Oct. 19, 1979

Bear Hill No. 10 182511 Apr. 11, 1957 Oct. 19, 1979

Bear Hill Nos. 11-16 182512-182517 Apr. 15, 1957 Oct. 19, 1979

Bear Hill Nos. 17-28 182518-182529 Apr. 17, 1957 Oct. 19, 1979

Bear Hill Nos. 35 & 36 182530-182531 Apr. 17, 1957 Oct. 19, 1979 Green Brush No. 1 182532
May 31, 1956 Oct. 19, 1979

Green Brush No. 2 182533 Aug. 12, 1956 Oct. 19, 1979

Green Brush Nos. 3-5 182534-182536 Apr. 11, 1957 Oct. 19, 1979

Green Brush Nos. 6, 7 182537-182538 Apr. 12, 1957 Oct. 19, 1979

Green Brush Nos. 8, 9 182539-182540 Apr. 11, 1957 Oct. 19, 1979
Wild Indian Nos. 1-3 182462-182564 Feb. 18, 1963 Oct. 19, 1979
Wild Indian Nos. 4-14 182565-182575 Sept. 23, 1979 Oct. 19, 1979

We point out that the Dru's Cedar Nos. 1 through 6, Dru's Mill Site Nos. 1 through 8, and Tunnel Site, U MC 182382 through U MC 182394, were declared null and void by BLM. That decision was affirmed by the Board because of the failure of appellant to respond timely to a contest complaint in Phillips Petroleum Co. v. Melvin Bradshaw, 66 IBLA 234 (1982).